IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

W.P(C).No. 25044 of 2007(F)

PETITIONER:

T. JANAKI AMMA, AGED 87 YEARS,
W/O. LATE K.P.DAMODARAN NAIR, THEKKAL HOUSE,
P.O. PONMERI, VADAGARA, KOZHIKODE DISTRICT.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY, FINANCE,
   SECRETARIAT, TRIVANDRUM.

2. **COMMISSIONER OF LAND REVENUE,**
   REVENUE DEPARTMENT, TRIVANDRUM.

3. **THE ADDITIONAL SALES TAX OFFICER,**
   PATHANAMTHITTA.

4. **THE DISTRICT COLLECTOR,**
   KOZHIKODE.

5. **THE TAHSILDAR,**
   REVENUE RECOVERY, VADAKARA,
   KOZHIKODE DISTRICT.

BY GOVERNMENT PLEADER, SRI.K.P. PRADEEP

THIS WRIT PETITION (C.) HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON 18/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 25044 OF 2007 - F

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Dated this the 18th day of December, 2007

J U D G M E N T

Petitioner's husband late K.P. Damodaran Nair was a partner of M/s. Malabar Wires and Allied Products. By document Nos.507/1990 and 533/1990, executed on 23.05.1990, 0.1580 of land in R.S. No.338/7 of Thiruvallur Village was conveyed to her. Petitioner submits that since then the property was in her possession and enjoyment. It is stated that while so, Sri.K.P. Damodaran Nair expired on 06.09.1993.

2. Long thereafter, Ext.P1 dated 27.07.2002 and Ext.P2 dated 30.07.2002 notices under the Revenue Recovery Act were served on the petitioner for recovery of Rs.21,48,179/- being the sales tax arrears of the firm in which her deceased husband was a Partner, for the Assessment Years. 1986-87 to 1992-93. Petitioner submits that she was totally unaware of the liability that was sought to be enforced against her. She made enquiries and obtained copies of the assessment orders, which are Exts.P4(a) to P4(g).

3. She filed O.P. No. 22822 of 2002 before this Court and that case was disposed of by Ext.P3 judgment directing that the authorities shall not proceed against the petitioner personally or against her properties. However, it was directed that if the respondents have a case that the deceased had transferred the property to the petitioner to evade tax, they are free to proceed with the matter. It is stated that the respondent continued the revenue recovery action and pursuant to Ext.P5 notice issued under Section 49 of the Revenue Recovery Act the property was attached on 28.08.2002.

4. Thereupon the petitioner filed O.P.No.9652 of 2003, which was disposed of by judgment dated 08.02.2005 directing the petitioner to prefer a claim petition before the 5th respondent who was also directed to consider the same. Accordingly, a claim petition was filed but the same was rejected by Ext.P6 order on the ground that the transfer in favour of the petitioner was after the public revenue had fallen due in 1986 and that the transfer was to evade tax. The petitioner filed appeal against Ext.P5 judgment before the 4th respondent and that was also rejected by Ext.P7 on identical reasons. At that stage W.P.(C)No.23723 of 2006 was filed. That

writ petition was disposed of by Ext.P8 judgment directing that the 2nd respondent shall dispose of the revision petition filed by the petitioner against Ext.P7, deferring the revenue recovery proceedings in the meanwhile.

5. In pursuance to Ext.P8 judgment it is stated that the 2nd respondent posted the revision petition for hearing on 05.06.2007, when counsel for the petitioner appeared and filed his Vakalath. He sought an adjournment for arguing the matter but was granted only two days time. On its expiry, stating that the petitioner had not filed any written argument, the revision petition was rejected by Ext.P9 order. Following Ext.P9, Ext.P10 notice was issued and the petitioner was called upon to remit the amount with interest and collection charges. It is in this background this writ petition has been filed praying to quash Exts.P6, P7, P9 and P10 and also to direct the respondents not to proceed with the revenue recovery steps against the property belonging to the petitioner for the dues of her husband or from M/s. Malabar Wires and Allied Products.

6. A counter affidavit has been filed by the 5th respondent. It is stated that since 1986 assessment under the KGST Act was pending against the petitioner's husband and that on completion

thereof Exts.P4 (a) to P4(g) assessment orders were issued, It is stated that even if document Nos.507/1990 and 533/1990 are assumed to be executed, they are void in law, in view of the provisions contained in Section 26A of the KGST Act and Section 44 (1) of Kerala Revenue Recovery Act. It is also stated that pursuant to the judgment of this Court, the claim petition was considered and rejected by Ext.P6 and that the appeal filed was also rejected by Ext.P7, which order was confirmed in Ext.P9 order passed in the revision petition filed by the petitioner. On this basis it is contended that the recovery proceeding initiated against the petitioner is legal and valid.

7. It is contended by the petitioner that Section 44 of the Revenue Recovery Act can apply only on service on a written demand and as Exts.P1 and P2 were served 12 years after transfer, these notices cannot in any manner affect the validity of the transfers in her favour. It is also contended that going by Ext.P4 series of assessment orders, the assessment orders for 1986-87 and 1987-88, tax liability is nil and since transfer of the property was effected on 23.05.1990, if at all there is a liability for tax, it can at best be only for the assessment years 1988-89 and 1989-90. It

is again contended that under Section 17(6) of the Act assessment ought to be completed within 4 years, which period was extended to 5 years only with effect from 31.03.2002. On this basis it is argued that Ext.P4 series assessment orders are time barred. Yet another contention raised by the petitioner is that Section 26A providing that where during the pendency of proceeding under the Act any assessee transfers any assets, such transfer shall be void, was introduced only by Act 13 of 1993 with effect from 01.04.1993. Reliance is placed on the judgments in O.P.No. 23386 of 1999 and W.A.No. 2469 of 2002. It is also contended that Section 26B providing that the tax payable to be the first charge on the property, was introduced by Act 23 of 1999 with effect from 01.04.1999. It is argued that these provisions cannot have any retrospective effect to affect that the transfer effected on 23.05.1990 in her favour.

8. On going through Exts.P6, P7 and P9, I notice that none of these contentions have been properly dealt with by any one of these authorities. Although the Petitioner has urged this contentions, in the revision petition filed, the revision was rejected merely on the reason that despite the two days adjournment that was granted written argument was not filed. It is purely on this only technical

reason and that too without adverting to the contentions raised that the revision was rejected. In my view by rejecting the revision petition of the petitioner, the petitioner was not afforded a reasonable opportunity of hearing or has the 2nd respondent independently considered the points that arise for consideration in the revision petition. For this reason itself Ext.P9 order of the 2nd respondent is to be quashed and I do so. Necessarily therefore, Ext.P10 notice calling upon the petitioner to remit the amount claimed from her also is quashed.

9. The 2nd respondent is directed to consider the revision petition filed by the petitioner, against Ext.P7 appellate order, with notice to the petitioner and after affording a reasonable opportunity of hearing. The 2nd respondent shall dispose of the revision as expeditiously as possible, at any rate, within 3 months of receipt of a copy of this judgment. In the meanwhile, all further proceedings pursuant to Exts.P4 (a) to P4(g) assessment orders and Exts.P1 and P2 revenue recovery notices shall be kept in abeyance.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-